IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6046 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINCHANDRA HARMANBHAI PATEL

Versus

CHUNIBHAI GOVINDBHAI PATEL

Appearance:

MR JITENDRA M PATEL for Petitioners

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The prayer of the petitioners is for quashing the order dated 12-9-1985 Annexure-'A' of the Mamlatdar, order dated 7-4-1986 Annexure-'B' of the Deputy Collector and order dated 30-3-1990 Annexure-'C' of the Revenue Tribunal.

#. The respondent has been served long back but, none has appeared on his behalf. As such, Shri JM Patel, learned counsel for the petitioners was heard and the impugned orders were examined.

#. At the outset, it may be mentioned that the litigation is pending since 1958 and, so far it has not been finally decided. Shri Patel has requested that the matter may be finally decided in this petition. However, disputed question of fact can not be decided in exercise of jurisdiction under Article-226 of the Constitution of India. The only thing which can be undertaken in this petition is to test the validity of the impugned orders Annexures-'A','B' and 'C'. It appears that the Prant Officer passed an order dated 5-3-1975 in a Tenancy Appeal of 1974. A revision was preferred against that order before the Gujarat Revenue Tribunal. The Tribunal, by order dated 15-10-1975 allowed the revision and remanded the matter to the Mamlatdar. Thereafter, fresh proceedings were initiated and again revision was filed before the Gujarat Revenue Tribunal. The Mamlatdar passed order dated 29-4-1978 and ordered to initiate the proceedings under the provisions of sec.32(1)(B) of the Bombay Tenancy Act. An appeal was preferred before the Deputy Collector. The Mamlatdar found that the tenant was in possession on the relevant date and was dispossessed by the landlord. The Deputy Collector found that the possession of the suit land was liable to be handed over to the tenant and directed initiation of proceedings under sec.32(G) of the Tenancy Act for fixing the purchase price. The Gujarat Revenue Tribunal, in revision, after allowing the same partly and setting aside the order of the Deputy Collector dated 10-10-1981, remanded the matter to the Mamlatdar for making fresh inquiry under sec.32(1)(B) of the Tenancy Act.

#. Before the Mamlatdar, after remand, the landlords could not appear. It is informed by Shri Patel that, because of riots in Nadiad during the relevant period that the landlords could not appear before the Mamlatdar. The Mamlatdar considered the matter ex-parte and ultimately ordered that the tenant is entitled to take back possession of the suit land as per the provisions of sec.31(B) of the Tenancy Act.

#. Vide Annexure-'A', the landlords preferred appeal which was dismissed by the Deputy Collector vide Annexure-'B' on 7-4-1986. Feeling aggrieved, the landlords preferred revision, which was also dismissed on 30-3-1990 vide Annexure-'C'. Feeling aggrieved from these orders, the landlords have preferred this writ

petition.

#. Shri JM Patel, learned counsel for the petitioners has contended that the three authorities have fallen in error in holding that the ingredients of sec.31(1)(B) of the Tenancy Act were made out. The matter has to be examined on the legal side and incidently it has to be seen, whether factually also the tenant could establish the ingredients of sec.32(1)(B). Needless to say that, after remand the matter was to be decided by the Mamlatdar in accordance with the provisions of sec.32(1)(B) of the Tenancy Act. Looking to the ingredients of sec.32(1)(B), it appears that the onus is on the tenant to establish firstly that he was in possession of the land on the appointed day. 'Appointed day' has been defined under sec.2(2B) of the Act which means the 15th day of June 1955. The second requirement to be established by the tenant is that, he was dispossessed of such land or any part thereof by the landlords at any time before the specified date. 'Specified date' is defined under sec.2(16C) of the Act, to mean the date of coming into force of the Bombay Tenancy Act, 1972. Bombay Tenancy Act came into force with effect from 3-3-1973. So, basically two things are to be proved by the tenant. First is that, he was in possession on the appointed day i.e. on 15-6-1955 and secondly, he was dispossessed at any time before the specified date i.e. before 3-3-1973 and the third condition is that, he was dispossessed otherwise than in the manner provided in sec.29 or any other provision of this Act. These ingredients are apparently flowing from sec.32(1)(B) of the Act and these ingredients were required to be proved by the tenant in two earlier decisions of this Court BHAILALBHAI GOVINDBHAI v. BAI NANDUBA 1977 GLR 901 and GANGABEN BUDHIYABHAI v. DINSHAJI FAKIRJI 1982 GLH (UJ) 24 page-15. One of the earlier view by this Court in Bhailalbhai Govindbhai v. Bai Nanduba's case (supra) that, even assuming that the tenant was persuaded to surrender his tenancy, in as much as, it is an admitted position that surrender is not in accordance with the provisions of the Tenancy Act and that, possession has not been obtained either under sec.29 or any other provision of the Tenancy Act, landlords can not succeed, has not been approved by the Apex Court in D.T.KADAM v. RB DUBAL 1995(1) GLR 344. It was not a case from Gujarat, but from Maharashtra. However, the provisions of Bombay Tenancy Act sec.32(1)(B) were considered by the Apex Court in this case and inter alia, while laying down the conditions which are to be established by the tenant, it was held by the Apex Court that voluntary giving of possession does

not amount to dispossession unless the law provides for it. The dispossession, according to the Apex Court in this case, should have been, therefore, either by legal process or by physical act of expulsion. It will not include leaving possession voluntary or by surrender.

#. Coming to the validity of the impugned orders, no doubt, ex-parte order was passed by the Mamlatdar on 12-9-1985 Annexure-'A' but, simply because the landlords could not appear, the Mamlatdar was not absolved of his duty to scrutinize the evidence on record - more particularly, when it was brought by the tenant earlier. It may be noted that litigation is pending since 1958. After remand, no oral evidence was adduced by the tenant, which is indicated in the judgment of the Mamlatdar Annexure-'A'. A pursis was given on behalf of the tenant that no further oral evidence is required to be given in addition to the deposition recorded earlier. Still, there is no discussion of deposition of the tenant recorded earlier, that is, before the matter was remanded to the Mamlatdar and without discussing that evidence, the Mamlatdar concluded that the tenant was entitled to take back possession and ingredients of sec.31(1)(B) were made out. This finding seems to be self-contradictory because, it was contended on behalf of the tenant before the Mamlatdar that the tenant was in possession during the period between 1969-70 of survey no.76/3, during the period between 1970-71 of survey no.128/2 and during the period between 1967-68 of survey no.191/7. These contentions itself indicated that the tenant was not in possession on the appointed day (i.e. on 15-6-1955). If the Mamlatdar would have cared to go through the deposition of the tenant as contained in Annexure-'E', he should have noticed the stand of the tenant that he was cultivating the land on the tiller's day. Tiller's day is 1-4-1957. Moreover, cryptic findings have been recorded by the Mamlatdar and without applying his mind to the ingredients of sec.31(1)(B), abrupt finding was recorded by him that the ingredients of sec.31(1)(B) are made out. There is no discussion in the order of the Mamlatdar Annexure-'A' as to when the tenant was dispossessed. On such vague discussion, the order of the Mamlatdar deserves to be quashed. Perusal of Annexure-'E', the earlier statement of the tenant shows that, in cross-examination, he has stated that he was dispossessed in rainy season of the year 1967. This is also a vague statement. Needless to say that, no complaint was lodged about illegal taking of possession by the landlords.

#. From the above discussion, it appears that the

Mamlatdar, without looking the material on record, recorded finding that the ingredients of sec.31(1)(B) are fulfilled. Such cryptic finding dehors from evidence on record can not be said to be legal finding, hence, it is required to be quashed.

#. The other order Annexure-'B' is of the Deputy Collector in appeal, passed on 7-4-1986. Here also, the same lacuna can safely be noticed. Except affirming the order of the Mamlatdar, the appellate authority has also not discussed the evidence for coming to the conclusion, whether ingredients of sec.31(1)(B) are made out or not. Consequently, such appellate order confirming the order of the Mamlatdar can not be sustained. Similar is the fate of order Annexure-'C' dated 30-3-1990 of the Gujarat Revenue Tribunal. Seemingly, it appears to be a detailed order but, the ultimate conclusion is in para-13, which also indicate that the findings of the two courts below were affirmed without application of mind on the legal position, whether the ingredients of sec.31(1)(B) are made out or not. Consequently, this order also can not be sustained.

##. It may be mentioned that to discharge the initial burden of the tenant to establish that he was in possession of land of survey no.76/3 area 30-Guntha, survey no.191/7 area 1-Acre-19-Guntha and survey no.128/2 area 1-Acre-7-Guntha on the appointed day, namely, on 15-6-1955 after remand he did not adduce any evidence before the Mamlatdar on this point. Likewise, he should have established that he was dispossessed from these survey numbers before the specified date, namely, before 3-3-1973. Here also, no evidence worth the name was placed before the Mamlatdar by the tenant after remand. Before the remand, a vague statement was given by the tenant that he was dispossessed in the rainy season of 1967. Consequently, this ingredient was also not proved by the tenant. The condition of dispossession, namely, forcibly dispossession was also not proved by the tenant. Consequently, he was not entitled to get back possession of land in dispute from the landlords, petitioners. The three orders being patently illegal are liable to be quashed.

##. The petition therefore succeeds and is hereby allowed. The impugned orders Annexure-'A', 'B' and 'C' are hereby quashed and set aside. No order as to costs.

December 7, 2000. [D.C. Srivastava, J.]

/sakkaf